

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 55 OF 2016

MR. RALPH DENZIL SAOLAZARO COLACO,
REP. HEREIN BY ATT. MR. PRASHANT
SAWANT.

... Appellant

Versus

THE CHIEF MANAGER SBI AND ANR.,

... Respondents

Mr. Kaif Noorani, Advocate for the appellant.

Coram:- F. M. REIS, J.

Date:- 17th June, 2016

P.C.

Heard Mr. Noorani, learned counsel appearing for the appellant.

2. The above appeal challenges the judgments passed by the Courts below whereby an application filed by the respondents under Order 7 Rule 11 of the Civil Procedure Code came to be allowed and the plaint filed by the appellant challenging the proceedings initiated by the respondents under SARFAESI Act came to be rejected.

3. Mr. Noorani, learned counsel appearing for the appellant has pointed out that the respondents issued a notice under Section 13(2) of the SARFAESI Act and that no notice in terms of Section 13(4) of the SARFAESI Act was issued. The learned counsel further pointed out that as there is no valid notice in terms of Section 13(4) of the

SARFAESI Act, the question of approaching the D.R.T. challenging such action under Section 17 of the Act would not arise at all. The learned counsel thereafter has minutely taken me through the subject notice dated 15.07.2013 to point out that such notice cannot be construed to be issued under Section 13(4) of the SARFAESI Act and consequently, the findings of the Courts below that the Civil Court has no jurisdiction to entertain the suit is misconceived. The learned counsel further pointed out that the appellant is prepared to work out a settlement with regard to the alleged claim of the respondents and as such, the above appeal be admitted for consideration.

4. I have considered the submissions of the learned counsel and I have also gone through the records. There is a bar of the Civil Court in circumstances as specified under the SARFAESI Act. It is not disputed that the notice under Section 13(2) of the SARFAESI Act was issued by the respondents. The subsequent notice dated 15.07.2013 read as a whole can prima facie be construed to be a notice under Section 13(4) of the SARFAESI Act though the appellant is contending that such notice is not valid and in fact does not meet the requirements as provided in Section 13(4) of the SARFAESI Act. Nevertheless, such contention can be raised by the appellant if he is so entitled in an appeal under Section 17 of the SARFAESI Act. To that extent, the contentions of the appellant on that count are left open.

5. On perusal of the judgments passed by the Courts below, it has been clearly held that Order 7 Rule 11 of the Civil Procedure Code is applicable as the suit itself is barred by law and as such the plaint has been rejected. As such, I find no infirmity committed by the Courts below on that count. In such circumstances, I find that no substantial question of law arises in the present appeal for consideration. The appeal stands accordingly rejected. All contentions of the appellant are left open.

F. M. REIS, J.

at*